

Marcus I, *Norfolk and Portsmouth Journal*, 20 February 1788

“Marcus,” a response to George Mason’s objections to the Constitution, was written by James Iredell (1751–1799), a resident of Edenton and one of the leading lawyers in North Carolina.

MR. M’LEAN, I beg the favour of you to publish in your paper, the following Answers to Mr. Mason’s Objections to the New Constitution. Each objection is inserted in his own words (as taken from a printed newspaper) before the answer given to it, so that the merits of both will be fairly before the Public.—Nothing can be more easy than the business of objecting, and as mankind are generally much more apt to find fault than to approve its success is commonly proportionable; but I trust the good sense of America, at this awful period, will exert itself to judge coolly and impartially, especially as the dissenting gentlemen appear to differ as much from each other as from the respectable majority who have recommended the New Constitution to the public.—I am Sir, your very humble servant,

The AUTHOR.

Answers to Mr. Mason’s Objections to the New Constitution, Recommended by the late Convention at Philadelphia.

1st. Objection.

“There is no declaration of rights, and the laws of the general government being paramount to the laws and constitutions of the several States, the declarations of rights in the separate States are no security; nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several States.”

Answer.

1. As to the want of a Declaration of Rights.

The introduction of these in England, from which the idea was originally taken, was in consequence of usurpations of the Crown, contrary, as was conceived, to the principles of their government. But there, no original constitution is to be found, and the only meaning of a declaration of rights in that country is, that in certain particulars specified, the Crown had no authority to act. Could this have been necessary, had there been a Constitution in being, by which it could have been clearly discerned whether the Crown had such authority or not? Had the people by a solemn instrument delegated particular powers to the Crown at the formation of their government, surely the Crown which in that case could claim under that instrument only, could not have contended for more power than was conveyed by it. So it is in regard to

the new Constitution here: The future government which may be formed under that authority, certainly cannot act beyond the warrant of that authority. As well might they attempt to impose a King upon America, as go one step in any other respect beyond the terms of their institution. The question then only is, whether more power will be vested in the future government than is necessary for the general purposes of the Union. This may occasion a ground of dispute—but after expressly defining the powers that are to be exercised, to say that they shall exercise no other powers (either by a general or particular enumeration) would seem to me both nugatory and ridiculous. As well might a Judge when he condemns a man to be hanged, give strong injunctions to the Sheriff that he should not be beheaded.(a)

2. As to the common law, it is difficult to know what is meant by that part of the objection. So far as the people are now entitled to the benefit of the common law, they certainly will have a right to enjoy it under the new constitution, till altered by the general Legislature, which even in this point has some cardinal limits assigned to it. What are most acts of Assembly but a deviation in some degree from the principles of the common law? The people are expressly secured (contrary to Mr. Mason's wishes) against *ex post facto* laws, so that the tenure of any property at any time held under the principles of the common law, cannot be altered by any act of the future general legislature. The principles of the common law, as they now apply, must surely always hereafter apply, except in those particulars in which express authority is given by this Constitution; in no other particular can the Congress have authority to change it, and I believe it cannot be shewn that any one power of this kind given is unnecessarily given, or that the power would answer its proper purpose if the Legislature was restricted from any innovations on the principles of the common law, which would not in all cases suit the vast variety of incidents that might arise out of it.

IId. Objection.

“In the House of Representatives there is not the substance but the shadow only of representation, which can never produce proper information in the Legislature, or inspire confidence in the people; the laws will therefore be generally made by men little concerned in, and unacquainted with, their effects and consequences.”

Answer.

This is a mere matter of calculation. It is said the weight of this objection was in a great measure removed by altering the number of 40000 to 30000 constituents. To shew the discontented nature of man, some have objected to the number of representatives as being too large. I leave to every man's judgment whether the number is not sufficiently respectable, and whether if that number be sufficient it would have been right, in the very infancy of this government, to burthen the people with a great additional expence to answer no good purpose.(b)

IIId. Objection.

“The Senate have the power of altering all money bills, and of originating appropriations of money, and the salaries of the officers of their own appointment, in conjunction with the President of the United States; although they are not the Representatives of the people, or amenable to them. These, with their other great powers (*viz.* their powers in the appointment of ambassadors and all public officers, in making treaties, and in trying all impeachments), their influence upon and connection with the Supreme Executive from these causes; their duration of office, and their being a constant existent body almost continually sitting, joined with their being one complete branch of the Legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please upon the rights and liberties of the people.”

Answer.

This objection respecting the dangerous power of the Senate, is of that kind which may give rise to a great deal of gloomy prediction, without any solid foundation. An imagination indulging itself in chimerical fears, upon the disappointment of a favourite plan may point out danger arising from any system of government whatever, even if Angels were to have the administration of it; since I presume, none but the Supreme Being himself is altogether perfect, and of course every other species of beings may abuse any delegated portion of power. This sort of visionary scepticism therefore will lead us to this alternative, either to have no government at all, or to form the best system we can, making allowance for human imperfection. In my opinion, the fears as to the power of the Senate are altogether groundless, as to any probability of their being either able or willing to do any important mischief. My reasons are—

1. Because tho' they are not immediately to represent the people, yet they are to represent the Representatives of the people, who are annually chosen, and it is therefore probable, the most popular, or confidential persons in each State, will be elected members of the Senate.
2. Because one third of the Senate are to be chosen as often as the immediate Representatives of the people, and as the President can act in no case from which any great danger can be apprehended without the concurrence of two-thirds, let us think ever so ill of the designs of the President, and the danger of a combination of power among a standing body generally associated with him, unless we suppose every one of them to be base and infamous (a supposition, thank God, bad as human nature is, not within the verge of the slightest probability), we have reason to believe that the one third newly introduced every second year, will bring with them from the immediate body of the people a sufficient portion of patriotism and independence to check any exorbitant designs of the rest.
3. Because in their legislative capacity they can do nothing without the concurrence of the House of Representatives, and we need look no further than England for a clear proof of the amazing consequence which Representatives of the people bear in a free government. There the King (who is hereditary, and therefore not so immediately interested, according to narrow views of interest which commonly govern Kings, to consult the welfare of his people) has the

appointment to almost every office in the government, many of which are of high dignity and great pecuniary value; has the creation of as many Peers as he pleases, is not restricted from bestowing places on the members of both Houses of Parliament, and has a direct negative on all bills, besides the power of dissolving the Parliament at his pleasure. In theory would not any one say this power was enormous enough to destroy any balance in the Constitution? Yet what does the history of that country tell us?—That so great is the natural power of the House of Commons (tho' a very imperfect representation of the people, and a large proportion of them actually purchasing their seats), that ever since the Revolution the Crown has continually aimed to corrupt them by the disposal of places and pensions; that without their hearty concurrence it found all the wheels of government perpetually clogged; and, that notwithstanding this, in great critical emergencies, the members have broke through the trammels of power and interest, and, by speaking the sense of the people (tho' so imperfectly representing them) either forced an alteration of measures, or made it necessary for the Crown to dissolve them. If their power under these circumstances, is so great, what would it be if their Representation was perfect and their members could hold no appointments, and at the same time had a security for their seats? The danger of a destruction of the balance would be perhaps on the popular side, notwithstanding the hereditary tenure and weighty prerogatives of the Crown, and the permanent station and great wealth and consequence of the Lords. Our Representatives therefore, being an adequate and fair representation of the people, and they being expressly excluded from the possession of any places, and not holding their existence upon any precarious tenure must have vast influence; and considering that in every popular government the danger of faction is often very serious and alarming, if such a danger could not be checked in its instant operation by some other power more independent of the immediate passions of the people, and capable therefore of thinking with more coolness, the government might be destroyed by a momentary impulse of passion, which the very members who indulged it might for ever afterwards in vain deplore. The institution of the Senate seems well calculated to answer this salutary purpose. Excluded as they are from places themselves, they appear to be as much above the danger of personal temptation as they can be. They have no permanent interest as a body to detach them from the general welfare, since six years is the utmost period of their existence, unless their respective legislatures are sufficiently pleased with their conduct to re-elect them. This power of re-election is itself a great check upon abuse, because if they have ambition to continue members of the Senate, they can only gratify this ambition by acting agreeably to the opinion of their constituents. The House of Representatives, as immediately representing the people, are to originate all money bills. This I think extremely right, and it is certainly a very capital acquisition to the popular Representative. But what harm can arise from the Senate, who are nearly a popular Representative also, proposing amendments when those amendments must be concurred with by the original proposers? The wisdom of the Senate may sometimes point out amendments, the propriety of which the other House may be very sensible of, though they had not occurred to themselves. There is no great danger of any body of men suffering by too eager an adoption of any amendment proposed to any system of their own. The probability is stronger of their being too tenacious of their original opinion, however erroneous, than of their profiting by the wise information of any other persons whatever. Human nature is so constituted, and therefore I think we may safely confide in the admission of a free intercourse of opinion on the detail of business, as well as to taxation as to other points.

Our House of Representatives surely could not have such reason to dread the power of a Senate circumstanced as ours must be, as the House of Commons in England the permanent authority of the Peers, and therefore a jealousy which may be well grounded in the one case, would be entirely ill directed in the other. For similar reasons, I dread not any power of originating appropriations of money as mentioned in the objection. While the concurrence of the other House must be had, and as that must necessarily be the most weighty in the government, I think no danger is to be apprehended. The Senate has no such authority as to awe or influence the House of Representatives, and it will be as necessary for one as for the other that proper active measures should be pursued. And in regard to appropriations of money, occasions for such appropriations may, on account of their concurrence with the executive power, occur to the Senate, which would not to the House of Representatives; and therefore if the Senate were precluded from laying any such proposals before the House of Representatives, the government might be embarrassed, and it ought ever to be remembered, that in our views of distant and chimerical dangers we ought not to hazard our very existence as a people, by proposing such restrictions as may prevent the exertion of any necessary power.—The power of the Senate in the appointment of Ambassadors, &c. is designed as a check upon the President.—They must be appointed in some manner. If the appointment was by the President alone, or by the President and a Privy Council (Mr. Mason's favourite plan), an objection to such a system would have appeared much more plausible. It would have been said that this was approaching too much towards Monarchical power, and if this new Privy Council had been like all I have ever heard of it would have afforded little security against an abuse of power in the President. It ought to be shewn by reason and probability (not bold assertion) how this concurrence of power with the President can make the Senate so dangerous. It is as good an argument to say that it will not, as that it will.^(c) The power of making treaties is so important, that it would have been highly dangerous to vest it in the Executive alone, and would have been the subject of much greater clamour. From the nature of the thing, it could not be vested in the popular Representative. It must therefore have been provided for, with the Senate's concurrence, or the concurrence of a Privy Council (a thing which I believe nobody has been mad enough to propose), or the power, the greatest Monarchical power that can be exercised, must have been vested in a manner that would have excited universal indignation, in the President alone. As to the power of trying impeachments, let Mr. Mason shew where this power could more properly have been placed. It is a necessary power in every free government, since even the Judges of the Supreme Court of Judicature themselves may require a trial, and other public officers might have too much influence before an ordinary and common Court. And what probability is there that such a Court acting in so solemn a manner, should abuse its power (especially as it is wisely provided that their sentences shall extend only to removal from office and incapacitation) more than any other Court? The argument as to the possible abuse of power, as I have before suggested, will reach all delegation of power whatever, since all power may be abused where fallible beings are to execute it; but we must take as much caution as we can, being careful at the same time not to be too wise to do any thing at all. The bold assertions at the end of this objection are mere declamation, and till some reason is assigned for them, I shall take the liberty to rely upon the reasons I have stated above, as affording a belief that the popular Representative must for ever be the most weighty in this government, and of course that apprehensions of danger from such a Senate are altogether ill founded.

(To be continued.)

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